



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 693 OF 2009**

**COL (RTD) FAROOD ASIF BUTT.....APPLICANT/RESPONDENT**

**VERSUS**

**JAMSHED AHMED BUTT.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**FEHMIDA BEGUM BUTT.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

1. The Application coming for consideration in this ruling is dated 3<sup>rd</sup> May 2017 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are seeking for the following orders:

**i. An Order to review vary and/or set aside the Certificates of Costs dated 20.3.2013 and 29.11.2016.**

**ii. An Order to set aside the prohibiting order dated 18<sup>th</sup> February 2013 encumbering LR. No. MOMBASA/M.S/BLOCK 1/416.**

**iii. An Order to strike out all pleading drawn, signed and filed by J. M. Theuri and Associates Advocates together with all the consequential orders.**

**iv. Costs of the Application.**

2. The Application is based on the grounds on the face of it an supported by the Affidavit of JAMSHED AHMED BUTT.

3. The Applicant submitted that JULIET MUKAMI THEURI who filed the suit has no practicing certificate and that the she does not appear on the Law Society of Kenya Portal and that the annexures by the said Advocate bear the names JULIET MUKAMI NDUNGU. Further that JULIET MUKAMI THEURI and JULIET MUKAMI NDUNGU are two Distinct persons.

4. Opposing the Application, the Administrator/Decree holder Respondent filed a Replying Affidavit dated 17.9.2018 sworn by Co. (Rtd) FAROOR ASIF BUTT in which it is deposed that the Applicant's Application is yet another delaying tactic that the Judgment Debtor has been using to avoid payment and to delay recovery of taxed costs which have continued to accrue interest and currently stands at Ksh.8,790,000/-.

5. The Decree holder/Respondent also submitted that the handwriting on the Replying Affidavit filed by the Judgment Debtor dated 3.5.2017 does resemble that of 1<sup>st</sup> Applicant JAMSHED AHMED BUTT. I will not comment on the same since I am not a document examiner.

6. I have considered the submissions by both parties in the NOPO. I find that under Section 34 B of the Advocates Act, an Advocate who fails to take out a practicing certificate commits an act of professional misconduct and the validity of any such legal documents is not affected.

7. The Decree holder submitted that the submissions by the Judgment Debtor are misleading since JULIET MUKAMI THEURI is the same as JULIET MUKAMI NDUNGU as stated in the letter from the Law Society of Kenya dated 4.5.2017 and further that JULIET MUKAMI NDUNGU practices in the name and sty of J. M. THEURI as exhibited by her Affidavit dated 17.5.2017.

8. I find that the Decree holder has shown that JULIET MUKAMI NDUNGU was all along qualified to practice law in the name and style of J. M. Theuri and Associates Advocates. I accordingly dismiss the Judgment Debtor's Application dated 3.5.2017 with costs to the Decree holder.

9. I further order that the Decree holder Application for Settlement of terms of sale to proceed.

Orders to issue accordingly.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 18<sup>TH</sup> DAY OF DECEMBER 2018**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI**